

to violation of that direction but is even without jurisdiction. Again even if this plea has some merit, the same has to be raised before the competent authority under the Act and this by itself does not confer any jurisdiction on the civil Court to go into the legality or the validity of the action of the Income Tax Officer. Besides this it is apparent from the impugned order of the civil Court that the stand of the Income Tax Officer is that that direction by the Appellate Commissioner only related to the assessment years other than those to which the present notices relate. Further it is the stand of the Income Tax Officer that under the law (section 153) he is under an obligation to finalise the assessment proceedings within a period of two years from the end of the assessment year and in view of that he could not indefinitely wait for the finalisation of the above noted proceedings in the civil Court. Anyway, the fact remains that the merits of the respondents' cases which of course are seriously disputed by the petitioner authorities cannot confer any jurisdiction on the civil Court or remove the bar of jurisdiction brought in by section 293 of the Income Tax Act referred to above.

(8) In the light of the discussion above, while allowing this petition, I set aside the impugned order of the trial Court and hold that the civil Court had no jurisdiction in the matter. I make no order as to costs.

R.N.R.

Before : G. C. Mital, J.

RAJ MASIH.—Petitioner.

versus

MUNICIPAL CORPORATION, AMRITSAR AND ANOTHER.—

Respondents.

Civil Revision No. 2147 of 1986

October 29, 1986

*Punjab Municipal Corporation Act (XLII of 1976)—Sections 269 and 396—Shop sought to be demolished by Municipal Corporation in possession of tenant—Order of demolition passed by the Corporation after notice and hearing to landlord—Order of demolition—Whether can be passed behind the back of the tenant—Tenant—Whether an aggrieved person in terms of Section 269—Notice to*

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*such tenant—Whether necessary—Suit for injunction filed by tenant—Notice under Section 359 not given to Corporation—Said suit—Whether maintainable.*

*Held*, that Section 269 of the Punjab Municipal Corporation Act, 1976, specifically provides for the issuance of notice to the aggrieved person. In the tenanted premises there would be two aggrieved persons who have the interest in the property, namely, the owner and the tenant. Hence under Section 269 the tenant is also entitled to opportunity to defend his position and as such a notice to the tenant is also necessary.

(Para 3).

*Held*, that since proceedings were not taken after notice, to the tenant, there is no order of demolition against him. Hence it was not incumbent upon the tenant to issue notice under Section 396 of the Act before filing the suit for permanent injunction. Moreover, the shop would have been demolished during the period of notice, rendering the suit infructuous, and that is why sub-Section (3) of Section 396 provides for non-issue of notice in a suit for injunction. As such the suit filed by the tenant is maintainable.

(Paras 3 and 4).

*Petition for revision under section 115, C.P.C., of the order of the Court of Shri Amar Dutt, Additional District Judge, Amritsar, dated 22nd July, 1986 affirming that of Shri Dhian Singh, P.C.S., Additional Senior Sub-Judge, Amritsar, dated 15th August, 1986 directing that ad-interim injunction is hereby vacated.*

Gur Rattan Pal Singh, Advocate, for the Petitioner.

S. P. Bhullar, Advocate, for respondent No. 1.

Mr. Muneshwar Puri, Advocate, for respondent No. 2.

JUDGMENT

*Gokal Chand Mital, J.*

(1) Raj Masih was tenant of Gurdial Kaur in respect of the shop in dispute. When Municipal Corporation, Amritsar, wanted to demolish the shop, he filed civil suit for permanent injunction and applied for temporary injunction. The trial Court and the lower appellate Court refused to grant interim injunction to him. This is revision by him.

(2) The interim injunction has been declined mainly on the two grounds (1) that the plaintiff did not give notice under Section 396 of the Punjab Municipal Corporation Act, 1976 (for short 'the Act') before filing the suit and (2) that appeal against the order of demolition passed by the Municipal Corporation was competent under section 269 of the Act and the suit was barred.

(3) After considering the matter, I am of the view that the Courts below failed to exercise their jurisdiction and acted illegally and with material irregularity in not granting interim relief to the petitioner to which he was entitled on the facts of the case. Gurdial Kaur had leased out the shop to the petitioner as a tenant and when notice under Section 269 of the Act was issued it was issued to Smt. Gurdial Kaur and after hearing her objections, order for demolition was passed. No notice was given to the tenant nor he was afforded an opportunity to place his view point for consideration by the concerned authority. Section 269 specifically provides for the issue of a notice to the aggrieved person. In this case there would be two aggrieved persons who have interest in the property namely, Smt. Gurdial Kaur, the owner and landlady and Raj Masih as a tenant. Hence, under the aforesaid section the tenant was also entitled to a notice and an opportunity to defend his possession. He was denied this. Since he was not a party to the proceedings he was not obliged to file an appeal although he may have the remedy of appeal as well. Once the proceedings are conducted without opportunity and hearing, not only in violation of the principles of natural justice but also in violation of the provisions of section 269(1) of the Act, in spite of the bar of jurisdiction of the Civil Court, he would be entitled to file a suit in view of Full Bench decision of this Court in case *State of Haryana and others v. Vinod Kumar and others* (1). Therefore, on these peculiar facts, he has two remedies, one to file the suit and the other to file an appeal and it would be for him to elect and choose the remedy. In this case he has chosen the remedy of a civil suit. The decision to the contrary recorded by the courts below is hereby up-set.

(4) Adverting to the notice under Section 369 of the Act, since proceedings were not taken after notice to him and there is no order

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against him, it was not incumbent upon him to issue notice under section 396 of the Act. Moreover, the shop would have been demolished during the notice period, rendering his suit infructuous and that is why in a suit for injunction sub section (3) provides for non-issue of notice.

(5) It is not a simple case where Municipal Corporation is wanting to protect public property vested in it. Here admittedly, Gurdial Kaur is owner of the site and the construction. According to the notice, she had deviated from the sanctioned plan while raising construction. It is not disputed that the construction was made long time back and all through the tenant was in possession of the same. The notice under section 269 is vague and the defects in the construction or deviation from the sanctioned plan have not been pointed out in the notice issued to Gurdial Kaur nor are mentioned in the final order of demolition. For slight deviation which do not seriously infringe the provisions of the Act, Rules or By-laws, normally the matter is compounded. Why the compounding could not be done is apparent in this case as would be seen.

(6) The counsel for the Municipal Corporation was not that seriously opposing the revision as much the counsel for Smt. Gurdial Kaur opposed. In fact the action of demolition would affect the rights of Gurdial Kaur also but she is wanting the demolition of the shop with an ulterior motive so that the tenant is evicted or dispossessed in this guise. Therefore, keeping in view all the facts and circumstances of the case, I am of the firm view that it was a fit case in which the interim injunction should have been granted staying demolition of the shop till the final disposal of the suit.

(7) For the reasons recorded above, this revision is allowed. the orders of the two Courts below are set aside and temporary injunction is issued against the Municipal Corporation, Amritsar not to demolish the shop during the pendency of the suit. The petitioner shall have his costs from the Municipal Corporation, Amritsar and Gurdial Kaur of all the three courts and the two respondents shall share them equally.

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R.N.R.